



General Assembly

January Session, 2009

**Amendment**

LCO No. 6417

**\*SB0078506417SD0\***

Offered by:  
SEN. COLAPIETRO, 31<sup>st</sup> Dist.

To: Subst. Senate Bill No. 785

File No. 536

Cal. No. 367

**"AN ACT CONCERNING CONSTRUCTION CHANGE ORDERS."**

1 Strike everything after the enacting clause and substitute the  
2 following in lieu thereof:

3 "Section 1. Section 42-158j of the general statutes is repealed and the  
4 following is substituted in lieu thereof (*Effective July 1, 2009*):

5 (a) Each construction contract shall contain the following  
6 provisions: (1) A requirement that the owner pay any amounts due  
7 any contractor, subcontractor or supplier in a direct contractual  
8 relationship with the owner, whether for labor performed or materials  
9 furnished, not later than thirty days after the date any written request  
10 for payment has been made by such contractor, subcontractor or  
11 supplier; (2) a requirement that the contractor pay any amounts due  
12 any subcontractor or supplier, whether for labor performed or  
13 materials furnished, not later than thirty days after the date the  
14 contractor receives payment from the owner which encompasses labor  
15 performed or materials furnished by such subcontractor or supplier;

16 and (3) a requirement that the contractor shall include in each of its  
17 subcontracts a provision requiring each subcontractor and supplier to  
18 pay any amounts due any of its subcontractors or suppliers, whether  
19 for labor performed or materials furnished, not later than thirty days  
20 after the date such subcontractor or supplier receives a payment from  
21 the contractor which encompasses labor performed or materials  
22 furnished by such subcontractor or supplier.

23 (b) Each payment requisition submitted in accordance with the  
24 requirements of subsection (a) of this section shall include a statement  
25 showing the status of all pending construction change orders, other  
26 pending change directives and approved changes to the original  
27 contract or subcontract. Such statement shall identify the pending  
28 construction change orders and other pending change directives, and  
29 shall include the date such change orders and directives were initiated,  
30 the costs associated with their performance and a description of any  
31 work completed. As used in this section, "pending construction change  
32 order" or "other pending change directive" means an authorized  
33 directive for extra work that has been issued to a contractor or a  
34 subcontractor.

35 ~~[(b)]~~ (c) (1) If payment is not made by an owner in accordance with  
36 the requirements of subdivision (1) of subsection (a) of this section or  
37 any applicable construction contract, such contractor, subcontractor or  
38 supplier shall set forth its claim against the owner through notice by  
39 registered or certified mail.

40 (2) If payment is not made by a contractor in accordance with the  
41 requirements of subdivision (2) of subsection (a) of this section or any  
42 applicable construction contract, the subcontractor or supplier shall set  
43 forth its claim against the contractor through notice by registered or  
44 certified mail.

45 (3) If payment is not made by a subcontractor or supplier in  
46 accordance with the provisions of subdivision (3) of subsection (a) of  
47 this section, the subcontractor or supplier to whom money is owed

48 shall set forth its claim against the subcontractor or supplier who has  
49 failed to comply with the provisions of said subdivision (3) through  
50 notice by registered or certified mail.

51 (4) Ten days after the receipt of any notice specified in subdivisions  
52 (1), (2) and (3) of this subsection, the owner, contractor, subcontractor  
53 or supplier, as the case may be, shall be liable for interest on the  
54 amount due and owing at the rate of one per cent per month. Such  
55 interest shall accrue beginning on the date any such notice is received.  
56 In addition, such owner, contractor, subcontractor or supplier, upon  
57 written demand from the party providing such notice, shall be  
58 required to place funds in the amount of the claim, plus such interest  
59 of one per cent per month, in an interest-bearing escrow account in a  
60 bank in this state, provided such owner, contractor, subcontractor or  
61 supplier may refuse to place the funds in escrow on the grounds that  
62 the party making such demand has not substantially performed the  
63 work or supplied the materials according to the terms of the  
64 construction contract. In the event that such owner, contractor,  
65 subcontractor or supplier refuses to place such funds in escrow and  
66 such owner, contractor, subcontractor or supplier is found to have  
67 unreasonably withheld payment due a party providing such notice,  
68 such owner, contractor, subcontractor or supplier shall be liable to the  
69 party making demand for payment of such funds and for reasonable  
70 attorneys' fees plus interest on the amount due and owing at the rate of  
71 one per cent per month. In addition, any owner, contractor,  
72 subcontractor or supplier who is found to have withheld payments to  
73 a party providing such notice in bad faith shall be liable for ten per  
74 cent damages.

75 [(c)] (d) No payment may be withheld from a subcontractor or  
76 supplier for work performed or materials furnished because of a  
77 dispute between a contractor and another contractor, subcontractor or  
78 supplier.

79 [(d)] (e) This section shall not be construed to prohibit progress  
80 payments prior to final payment of the contract and is applicable to all

81 subcontractors and suppliers for material or labor whether they have  
82 contracted directly with the contractor or with some other  
83 subcontractor on the work. Each owner that enters into a contract  
84 under this section and fails or neglects to make payment to a  
85 contractor for labor and materials supplied under a contract, as  
86 required pursuant to this section, shall, upon demand of any person  
87 who has not been paid by the contractor for such labor and materials  
88 supplied in the performance of the work under the contract, promptly  
89 pay the person for such labor or materials. Demand for payment shall  
90 be served on the owner and a copy of each demand shall be sent to the  
91 contractor by certified mail, return receipt requested to any address at  
92 which the owner and contractor conduct business. If the owner fails to  
93 make such payment, the person shall have a direct right of action  
94 against the owner in the superior court for the judicial district in which  
95 the project is located. The owner's obligations for direct payments to  
96 the contractor, subcontractors or suppliers giving notice pursuant to  
97 this section shall be limited to the amount owed to the contractor by  
98 the owner for work performed under the contract at the date such  
99 notice is provided.

100 Sec. 2. Section 49-41a of the general statutes is repealed and the  
101 following is substituted in lieu thereof (*Effective July 1, 2009*):

102 (a) When any public work is awarded by a contract for which a  
103 payment bond is required by section 49-41, the contract for the public  
104 work shall contain the following provisions: (1) A requirement that the  
105 general contractor, within thirty days after payment to the contractor  
106 by the state or a municipality, pay any amounts due any subcontractor,  
107 whether for labor performed or materials furnished, when the labor or  
108 materials have been included in a requisition submitted by the  
109 contractor and paid by the state or a municipality; (2) a requirement  
110 that the general contractor shall include in each of its subcontracts a  
111 provision requiring each subcontractor to pay any amounts due any of  
112 its subcontractors, whether for labor performed or materials furnished,  
113 within thirty days after such subcontractor receives a payment from  
114 the general contractor which encompasses labor or materials furnished

115 by such subcontractor.

116 (b) Each payment requisition submitted in accordance with the  
117 requirements of subsection (a) of this section, except for any such  
118 payment requisition submitted pursuant to a contract administered by  
119 or in conjunction with the Department of Transportation, shall include  
120 a statement showing the status of all pending construction change  
121 orders, other pending change directives and approved changes to the  
122 original contract or subcontract. Such statement shall identify the  
123 pending construction change orders and other pending change  
124 directives, and shall include the date such change orders and directives  
125 were initiated, the costs associated with their performance and a  
126 description of any work completed. As used in this section, "pending  
127 construction change order" or "other pending change directive" means  
128 an authorized directive for extra work that has been issued to a  
129 contractor or a subcontractor.

130 [(b)] (c) If payment is not made by the general contractor or any of  
131 its subcontractors in accordance with such requirements, the  
132 subcontractor shall set forth his claim against the general contractor  
133 and the subcontractor of a subcontractor shall set forth its claim  
134 against the subcontractor through notice by registered or certified  
135 mail. Ten days after the receipt of that notice, the general contractor  
136 shall be liable to its subcontractor, and the subcontractor shall be liable  
137 to its subcontractor, for interest on the amount due and owing at the  
138 rate of one per cent per month. In addition, the general contractor,  
139 upon written demand of its subcontractor, or the subcontractor, upon  
140 written demand of its subcontractor, shall be required to place funds in  
141 the amount of the claim, plus interest of one per cent, in an interest-  
142 bearing escrow account in a bank in this state, provided the general  
143 contractor or subcontractor may refuse to place the funds in escrow on  
144 the grounds that the subcontractor has not substantially performed the  
145 work according to the terms of his or its employment. In the event that  
146 such general contractor or subcontractor refuses to place such funds in  
147 escrow, and the party making a claim against it under this section is  
148 found to have substantially performed its work in accordance with the

149 terms of its employment in any arbitration or litigation to determine  
150 the validity of such claim, then such general contractor or  
151 subcontractor shall pay the attorney's fees of such party.

152 [(c)] (d) No payment may be withheld from a subcontractor for  
153 work performed because of a dispute between the general contractor  
154 and another contractor or subcontractor.

155 [(d)] (e) This section shall not be construed to prohibit progress  
156 payments prior to final payment of the contract and is applicable to all  
157 subcontractors for material or labor whether they have contracted  
158 directly with the general contractor or with some other subcontractor  
159 on the work.

160 Sec. 3. Subsection (a) of section 49-42 of the general statutes is  
161 repealed and the following is substituted in lieu thereof (*Effective July*  
162 *1, 2009*):

163 (a) Any person who performed work or supplied materials for  
164 which a requisition was submitted to, or for which an estimate was  
165 prepared by, the awarding authority and who does not receive full  
166 payment for such work or materials within sixty days of the applicable  
167 payment date provided for in subsection (a) of section 49-41a, as  
168 amended by this act, or any person who supplied materials or  
169 performed subcontracting work not included on a requisition or  
170 estimate who has not received full payment for such materials or work  
171 within sixty days after the date such materials were supplied or such  
172 work was performed, may enforce such person's right to payment  
173 under the bond by serving a notice of claim on the surety that issued  
174 the bond and a copy of such notice to the contractor named as  
175 principal in the bond not later than one hundred eighty days after the  
176 last date any such materials were supplied or any such work was  
177 performed by the claimant. For the payment of retainage, as defined in  
178 section 42-158i, such notice shall be served not later than one hundred  
179 eighty days after the applicable payment date provided for in  
180 subsection (a) of section 49-41a, as amended by this act. The notice of

181 claim shall state with substantial accuracy the amount claimed and the  
182 name of the party for whom the work was performed or to whom the  
183 materials were supplied, and shall provide a detailed description of  
184 the bonded project for which the work or materials were provided. If  
185 the content of a notice prepared in accordance with subsection [(b)] (c)  
186 of section 49-41a, as amended by this act, complies with the  
187 requirements of this section, a copy of such notice, served not later  
188 than one hundred eighty days after the date provided for in this  
189 section upon the surety that issued the bond and upon the contractor  
190 named as principal in the bond, shall satisfy the notice requirements of  
191 this section. Not later than ninety days after service of the notice of  
192 claim, the surety shall make payment under the bond and satisfy the  
193 claim, or any portion of the claim which is not subject to a good faith  
194 dispute, and shall serve a notice on the claimant denying liability for  
195 any unpaid portion of the claim. The notices required under this  
196 section shall be served by registered or certified mail, postage prepaid  
197 in envelopes addressed to any office at which the surety, principal or  
198 claimant conducts business, or in any manner in which civil process  
199 may be served. If the surety denies liability on the claim, or any  
200 portion thereof, the claimant may bring action upon the payment bond  
201 in the Superior Court for such sums and prosecute the action to final  
202 execution and judgment. An action to recover on a payment bond  
203 under this section shall be privileged with respect to assignment for  
204 trial. The court shall not consolidate for trial any action brought under  
205 this section with any other action brought on the same bond unless the  
206 court finds that a substantial portion of the evidence to be adduced,  
207 other than the fact that the claims sought to be consolidated arise  
208 under the same general contract, is common to such actions and that  
209 consolidation will not result in excessive delays to any claimant whose  
210 action was instituted at a time significantly prior to the motion to  
211 consolidate. In any such proceeding, the court judgment shall award  
212 the prevailing party the costs for bringing such proceeding and allow  
213 interest at the rate of interest specified in the labor or materials contract  
214 under which the claim arises or, if no such interest rate is specified, at  
215 the rate of interest as provided in section 37-3a upon the amount

216 recovered, computed from the date of service of the notice of claim,  
 217 provided, for any portion of the claim which the court finds was due  
 218 and payable after the date of service of the notice of claim, such  
 219 interest shall be computed from the date such portion became due and  
 220 payable. The court judgment may award reasonable attorneys fees to  
 221 either party if upon reviewing the entire record, it appears that either  
 222 the original claim, the surety's denial of liability, or the defense  
 223 interposed to the claim is without substantial basis in fact or law. Any  
 224 person having direct contractual relationship with a subcontractor but  
 225 no contractual relationship express or implied with the contractor  
 226 furnishing the payment bond shall have a right of action upon the  
 227 payment bond upon giving written notice of claim as provided in this  
 228 section."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2009</i>	42-158j
Sec. 2	<i>July 1, 2009</i>	49-41a
Sec. 3	<i>July 1, 2009</i>	49-42(a)